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NERRAH BROWN, )  
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 ) Petitioner, )  
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 )  
 ) vs. )  
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 )  
 )  
 ) SHERIFF GREGORY J. AHERN, )  
 )  
 ) Respondent. )  
 )

No. C 10-05331 JF (PR)  
  
ORDER OF DISMISSAL

Petitioner, a pretrial detainee housed at the Glenn Dyer Detention Facility in Oakland, California, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, using the court form. Because Petitioner is a pretrial detainee, the Court construes the petition as being brought under § 2241.<sup>1</sup> Petitioner has paid the filing fee.

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<sup>1</sup> Such a person is not in custody “pursuant to the judgment of a state court,” 28 U.S.C. § 2254, and therefore brings his petition under 28 U.S.C. § 2241(c)(3). McNeely, 336 F.3d at 824 n.1.

**DISCUSSION**

According to the petition, Petitioner was arrested on March 6, 2007, on robbery charges. (Pet. at 2.) Petitioner alleges that he has been denied his right to a speedy trial, right to due process, right to equal protection, and right to counsel. (Pet. at 6.) Petitioner seeks a stay of state court proceedings pending disposition of the petition.

This Court has authority to entertain a petition for a writ of habeas corpus by a person in custody, but not yet convicted or sentenced. See McNeely v. Blanas, 336 F.3d 822, 824 n.1 (9th Cir. 2003); Application of Floyd, 413 F. Supp. 574, 576 (D. Nev. 1976). Although there is no exhaustion requirement for a petition brought under 28 U.S.C. § 2241(c)(3), principles of federalism and comity require that this court abstain and not entertain a pretrial habeas challenge unless the petitioner shows that: 1) he has exhausted available state judicial remedies, and 2) “special circumstances” warrant federal intervention. See Carden v. Montana, 626 F.2d 82, 83-84 & n.1 (9th Cir.), cert. denied, 449 U.S. 1014 (1980); see also Younger v. Harris, 401 U.S. 37, 43-54 (1971); Samuels v. Mackell, 401 U.S. 66, 68-74 (1971) (under principles of comity and federalism, a federal court should not interfere with ongoing state criminal proceedings by granting injunctive or declaratory relief absent extraordinary circumstances). Special circumstances that might warrant federal habeas intervention before trial include proven harassment, bad faith prosecutions and other extraordinary circumstances where irreparable injury can be shown. Carden, 626 F.2d at 84 (violation of Sixth Amendment right to a speedy trial not alone an extraordinary circumstance).

Petitioner has failed to show that special circumstances warrant federal intervention before the trial is held and any appeal is completed. Accordingly, this Court will abstain and DISMISS the petition without prejudice. Petitioner’s alleged constitutional violations are matters that can and should be addressed in the first instance by the trial court, and then by the state appellate courts, before he seeks a federal writ of habeas corpus.

  
JEREMY FOGEL  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

NERRAH BROWN,

Petitioner,

v.

SHERIFF GREGORY J. AHERN,

Respondent.

Case Number: CV10-05331 JF

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 2/22/11, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Nerrah Brown  
Glenn Dyer Detention Facility  
550 6th Street  
ART278  
Oakland, CA 94607

Dated: 2/22/11

Richard W. Wieking, Clerk